Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

NO. 09-518

ANDREW BULLOCK, IV
Appellant

v.

TREDYFFRIN TOWNSHIP, TREDYFFRIN TOWNSHIP POLIC DEPARTMENT, JUDY L. DIFILLIPO, WARREN E. KAMPF, BILL DEHAVEN, ROBERT W. LAMINA, E. BROOKS KEFFER, JR., PAUL J. DRUCKER, MARK DIFELICIANTONIO, MARIE R. GLEASON, HUGH O'HARE, EMELINE BALDASSARRE, VINCENT POMPO, THOMAS P. HOGAN, CAPTAIN ANDREW CHAMBERS, SERGEANT BARRAR, OFFICER JOHN DOE #1, OFFICER JOHN DOE #2, OFFICER JOHN DOE #3, OFFICER JOHN DOE #4, OFFICER JOHN DOE #5 AND OFFICER JOHN DOE #6
Respondents

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

Has the Petitioner presented a compelling reason for the Court to grant Certiorari to review the Entry of Judgment of the United States Court of Appeals for the Third Circuit given that:

A. The factual record supports the finding of the United States Court of Appeals for the Third Circuit that the United States District Court of the Eastern District of Pennsylvania properly dismissed the Petitioner's civil action pursuant to F.R.C.P. 8(a); and,

B. The factual record supports the finding of the United States Court of Appeals for the Third Circuit that the United States District Court of the Eastern District of Pennsylvania properly dismissed the Petitioner's civil action pursuant to F.R.C.P. 12(b)(6); and,

C. The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law; and,

D. In the instant matter, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant decisions of the United States Supreme Court.

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CONCISE STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

In the Petition for Writ of Certiorari, the Petitioner fails to set forth a basis for jurisdiction in the United States Supreme Court. As stated in the Rules of the Supreme Court of the United States Rule 10, "a petition for a writ of certiorari will be granted only for compelling reasons."

In this case, the United States Court of Appeals for the Third Circuit affirmed the Judgment of the United States District Court of the Eastern District of Pennsylvania, which dismissed the Petitioner's civil action, based upon his failure to comply with F.R.C.P. 8(a). The Judgment also dismissed the Petitioner's civil action based upon his failure to state a claim pursuant to F.R.C.P. 12(b)(6). The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law. Furthermore, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant decisions of the United States Supreme Court. Therefore, there is no basis for jurisdiction in this Court.

V. COUNTER-STATEMENT OF THE CASE

This matter derives from a civil action that was filed in the United States District Court for the Eastern District of Pennsylvania by the Petitioner, Andrew J. Bullock, IV (hereinafter "Petitioner"). In his initial Complaint, the Petitioner sought a preliminary injunction staying the sheriff's sale of his residence at 22 Sturbridge Lane, Wayne, PA. The initial Complaint never was served upon the "Tredyffrin defendants" (hereinafter "Respondents"[1]) and the injunction request was denied. On September 24, 2007, the Petitioner was granted permission to file an Amended Complaint. Petitioner also failed to serve this complaint upon the Respondents. Shortly thereafter, the sheriff's sale took place and the Petitioner was safely evicted from his residence.

In the interim, the Petitioner filed a Motion for Leave to File a Second Amended Complaint and a Motion for Leave to File a Third Amended Complaint. Prior to District Court's ruling on the pending Motions, and without Court permission, the Petitioner served a document entitled "Third

[1] The following parties are hereinafter collectively referred to as the "Respondents:" Tredyffrin Township, Tredyffrin Township Police Department, Judy L. Difillipo, Warren E. Kampf, Bill DeHaven, Robert W. Lamina, E. Brooks Keffer, Jr., Paul J. Drucker, Mark Ditelciantonio, Marie E. Gleason, Hugh O'Hare, Emeline Baldassarree, Vicent Pompo, Thomas P. Hogan, Captain Andrew Chambers, Sergeant Barrar, Officer John Doe #1, Officer John Doe #2, Officer John Doe#3, Officer John Doe #4, Officer John Doe #5 and Officer John Doe #6.

Amended Complaint" on the Respondents[2], and left multiple copies of the Complaint in the lobby of Lamb McErlane, P.C., the solicitor for defendant Tredyffrin Township. In response thereto, the Respondents filed a Motion to Dismiss the Third Amended Complaint.

On February 28, 2008, the Court entered an Order granting the Petitioner leave to file a Third Amended Complaint by March 21, 2008 and denying Petitioner's Motion for Leave to File a Second Amended Complaint as moot. Petitioner filed his Third Amended Complaint on March 21, 2008. Accordingly, the previously filed Motion to Dismiss Third Amended Complaint of the Respondents was denied without prejudice as moot.

The Third Amended Complaint essentially revolved around a series of disputes between the Petitioner and Main Street Village Homeowner's Association (hereinafter the "Homeowners' Association"). Petitioner's former residence was part of the Homeowner's Association. According to the Petitioner, he did not authorize the Homeowners' Association to request the issuance of building permits for roof renovations on his home. Despite the

[2] Specifically, the Petitioner served the "Third Amended Complaint" upon Vincent Pompo, Esquire and Police Captain Andrew Chambers.

Petitioner's objections, the Homeowners' Association obtained a building permit for the roof renovations. With regard to the Respondents, the majority were merely listed in the caption of the Complaint or mentioned in passing. The only substantive allegation regarding the Respondents was that the Petitioner had a limited communication with Township Manager, Marie Rita Gleason, (hereinafter referred to as "Gleason"). Petitioner also requested the presence of officers from the Tredyffrin Police Department to prevent roofers from entering his property.

Based on the allegations contained in the Third Amended Complaint, the Petitioner purported to assert a broad range of claims: fraud upon the court, fraud, mail fraud, wire fraud, civil rights violation, infringement on Constitutional rights, Section 1983 Complaint, Civil RICO Violation, negligence, negligence per se, legal malpractice, practicing law without a license, violation of the Fair Housing Act, Third Party Derivative Action, insurance fraud, violation of the Unfair Trade Practices and Consumer Protection Law and violation of the Telecommunications Act of 1996.

Specifically, against the Respondents, the Petitioner attempted to assert a claim under 42 U.S.C. § 1983, alleging that they infringed upon his "Fifth

Amendment Right of Property." Petitioner also claimed that the Respondents violated his "Fourteenth Amendment Right to Due Process." However, the only relief sought against the Respondents was a court directive to provide reports and records of all officers who responded to his home.

Petitioner failed to serve the Third Amended Complaint upon the Respondents, in accordance with Rules of Federal Procedure. Despite this, the Respondents re-filed their Motion to Dismiss the Third Amended Complaint. On October 21, 2008, the District Court granted all pending Motions to Dismiss the Third Amended Complaint and sua sponte dismissed the Third Amended Complaint as to all remaining defendants. The District Court dismissed the Petitioner's civil action, based upon his failure to comply with F.R.C.P. 8(a), as well as his failure to state a claim pursuant to F.R.C.P. 12(b)(6). The District Court further directed that this case be marked as closed, as all claims had been dismissed as to all of the defendants. Thereafter, on November 21, 2008, the Petitioner filed an appeal to the United States Court of Appeals for the Third Circuit. On July 31, 2009, the Court of Appeals for the Third Circuit issued an Entry of Judgment that affirmed the Judgment of the District Court.

Petitioner now seeks Certiorari in this Honorable Court.

VI. SUMMARY OF THE ARGUMENT

The Court of Appeals for the Third Circuit properly affirmed the District Court's dismissal of the Petitioner's Third Amended Complaint in its entirety for various reasons. First, the Petitioner failed to meet the basic pleading requirements of F.R.C.P. 8(a), as the allegations contained in the Third Amended Complaint provide no notice to the Respondents that would allow a defense.

Second, the Petitioner failed to state a prima facie case under 42 U.S.C. § 1983 based upon a violation of his Fifth Amendment right to property. Specifically, in allowing roofers temporarily onto the Petitioner's property for the purpose of renovations does not constitute a "taking" under the Fifth Amendment, especially as to the Respondents. Petitioner also failed to assert a § 1983 claim for a violation of his Fourteenth Amendment right to due process. Petitioner did not demonstrate the requisite denial of adequate notice or opportunity to be heard regarding his appeal of the building permit.

Finally, in the Petition for Writ of Certiorari, the Petitioner fails to set forth a basis for jurisdiction in the United States Supreme Court. As stated in

the Rules of the Supreme Court of the United States Rule 10, "a petition for a writ of certiorari will be granted only for compelling reasons." The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law. Furthermore, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant decisions of the United States Supreme Court. Therefore, there is no basis for jurisdiction in this Court.

VII. ARGUMENT

A. THE COURT OF APPEALS FOR THE THIRD CIRCUIT PROPERLY AFFIRMED THE DISTRICT COURT'S DISMISSAL OF THIRD AMENDED COMPLAINT BASED UPON THE PLAINTIFF'S FAILURE TO COMPLY WITH F.R.C.P. 8(a).

Out of the hundreds of paragraphs contained within the Third Amended Complaint and the hundreds of pages of attachments, the majority of the Respondents are merely listed in the caption or mentioned in passing. Such defective allegations violated even the "notice pleading" rules of the Federal Rules of Civil Procedure and required dismissal of the Third Amended Complaint, as to the Respondents. Specifically, Rule 8(a)(2) of the Federal Rules of Civil Procedure states that a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." *Id.*

The Third Circuit and other courts have clearly addressed the requirements of Rule 8(a) and have demanded that plaintiffs make individualized pleadings for named individual government defendants, such as the Respondents. While there is no heightened pleading requirement for constitutional claims against municipal officials, such complaints still must meet the basic pleading requirements of Rule 8(a). *See Evancho v. Fisher*, 423 F.3d 347, 352-53 (3d Cir. 2005). Applying this standard, the Court has stated that "[a]n individual government defendant in a civil rights action must have personal involvement in the alleged wrongdoing . . . . [p]ersonal involvement can only be shown through allegations of personal direction or of actual knowledge and acquiescence." *Id.* at 353 (citing *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988)). Furthermore, a plaintiff can not rely upon allegations that a defendant may have been involved in the alleged wrongdoing merely because of his or her position. *Evancho*, *supra* at 354. Such a complaint against individual defendants is adequate only where the complaint states "the conduct, time, place, and persons responsible." *Id.* at 353 (citing *Boykins v. Ambridge Area Sch. Dist.*, 621 F.2d 75, 80 (3d Cir. 1980).

Accordingly, where a plaintiff fails to make individualized allegations regarding the conduct of specifically named individual defendants (*i e.*, stating exactly which individual defendant did what conduct), courts have consistently dismissed such complaints *See Evancho*, *supra* at 354 (dismissing complaint under Rules 8(a) and 12(b)(6)). *See also Ersek v. Township of Springfield*, 822 F. Supp. 218 (E.D. Pa. 1993), *aff'd*, 102 F.3d 79 (3d Cir. 1996) (it is insufficient for plaintiff simply to assert all claims against "all defendants" without attempting to specify which defendant did what); *see also Alfano v. E.F. Hutton & Co., Inc.*, 606 F. Supp. 1100, 1117-18 (E.D. Pa. 1985) (dismissing claims where plaintiff failed to describe defendant's role in conspiracy, general allegations considered insufficient).

As stated above, in the instant case, there are no individualized allegations against the Respondents. Indeed, almost all of the Respondents are merely listed in the caption of the Complaint. Such allegations are plainly insufficient under Rule 8(a), as they provide no notice to the Respondents that would allow a defense. Regarding the Respondents, at most, the Petitioner has alleged that the police were merely present and that a permit was issued for roof renovations. However, neither allegation is sufficient to state any sort of a claim for anything. Accordingly, the Petitioner has failed to set forth a

definite statement demonstrating that he is entitled to relief regarding the Respondents pursuant to Rule 8(a).

Petitioner's argument that *pro se* filings should be "liberally construed" does not entitle him to Certiorari. This Honorable Court has opined that a *pro se* complaint must be held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (citing *Haines v. Kerner*, 404 U.S. 519, 520-521 (1972). However even applying these liberal standards, based on the foregoing, the Petitioner's claims against the Respondents are not cognizable.

B. THE COURT OF APPEALS FOR THE THIRD CIRCUIT PROPERLY AFFIRMED THE DISTRICT COURT'S DISMISSAL OF THE THIRD AMENDED COMPLAINT PURSUANT TO F.R.C.P. 12(b)(6) , AS THE PLAINTIFFS FAILED TO STATE A CLAIM UNDER 42 U.S.C. § 1983 BASED UPON A VIOLATION OF THE FIFTH AMENDMENT RIGHT TO PROPERTY AND THE FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS.

Petitioner's also argues that Certiorari should be granted, as his property rights were violated under the Takings Clause of the Fifth Amendment.

The language of 42 U.S.C. § 1983 provides, in pertinent part:

§ 1983. Civil action for deprivation of rights

Every person, who, under color of any statute,

ordinance, regulation, custom, or usage, of any State…subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress…

Id. See also Groman v. Township of Manalapan, 47 F.3d 628, 633, n.4 (3d Cir. 1995).

When interpreting this language, the Courts have opined that the statute does not create substantive rights; but, rather, it provides a remedy for the violation of rights created by federal law. *Groman, supra* at 633 (citing *Oklahoma City v. Tuttle*, 471 U.S. 808, 816 (1985)). Accordingly, in order to establish a prima facie case under 42 U.S.C. § 1983, a plaintiff must demonstrate: "(1) a person deprived him of a federal right; and (2) the person who deprived him of that right acted under color of state or territorial law." *Groman, supra* (citing *Gomez v. Toledo*, 446 U.S. 635, 640 (1980)). Furthermore, with regard to § 1983 claims against a municipality, the Courts have placed an additional burden of proof upon the plaintiff. Specifically,

"[A] plaintiff must prove the existence of a policy or custom that has resulted in a constitutional violation..." *Groman, supra at* 637; *see also Monell v. Department of Social Services,* 436 U.S. 658, 694-95 (1978) (A government entity is responsible under § 1983, when execution of a government's policy or custom, whether made by its lawmakers or by those whose acts represent official policy, inflicts the injury).

In the case at bar, the Petitioner claims that the Respondents violated his "right of property" under the Takings Clause of the Fifth Amendment.. The Takings Clause states: "nor shall private property be taken for public use, without just compensation." U.S. Const. amend V.

In order to establish a § 1983 claim based upon a violation of the Fifth Amendment right to property, a plaintiff must establish that an actual "taking" of his private property occurred. When analyzing this issue, the Courts have acknowledged the distinction between a permanent physical occupation, a physical invasion short of an occupation and a regulation that merely restricts the use of the property. *Jones v. Philadelphia Police Department*, 57 Fed. Appx. 939, 941 (3d Cir. 2003) (citing *Loretto V. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 430 (1982)). Therefore, not every physical

invasion is considered a "taking." *Jones, supra* (citing *Loretto*, 458 U.S. at 436, n.12). The Courts have subjected temporary invasions to a "complex balancing process to determine whether they are a taking...[because] they do not absolutely dispossess the owner of his rights to use, and exclude others from, his property." *Jones, supra* at 941-942 (citing *Loretto, supra*).

In applying this balancing test, the Courts consistently have found several factors to be of particular significance – "the economic impact of the regulation, the extent to which it interferes with investment-backed expectations and the character of the governmental action." *Jones, supra*, (citing *Loretto*, 458 U.S. at 432); *see also Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978)). Considering these factors, the Court in *Jones* held that police officers conducting a two-hour search of a privately owned office building and causing property damage did not amount to a "taking." *Id.* at 943. Specifically, the Court reasoned that "[i]n addition to – and partly because – of the short duration of the 'invasion,' it did not interfere with many, even most, of the traditional rights of property owners." *Id.*; *see also Hendler v. United States*, 952 F.2d 1364, 1371 (holding that "the government's activity was so short lived as to be more like the tort of trespass than a taking of property").

Instantly, it has been alleged that the Respondents were in violation of the Takings Clause, when they permitted roofers onto the plaintiff's property for the purpose of replacing his roof. When applying the three abovementioned factors regarding temporary invasions to the facts presently before this Court, allowing roofers temporarily onto the plaintiff's property does not constitute a "taking" under the Fifth Amendment. First, the economic impact to the plaintiff would be beneficial, as the roof replacement would serve to enhance the value to the property. Moreover, it would have been to the plaintiff's detriment had the roof not been replaced. Plaintiff's unit is part of a 5-unit building; therefore, to replace the roofs of neighboring units, without replacing the plaintiff's roof, would cause a seam to exist between the old and new roofs, which could be expected to leak. Second, the interference with the plaintiff's investment backed expectations was minimal. Plaintiff purchased the property with the knowledge that the Homeowner's Association had authority to repair and replace his roof, as it is explicitly stated in the Declaration of Covenants and Easement dated 12/20/1984, Article VIII, Exterior Maintenance. Finally, the action of the Respondents, in issuing the building permit, was standard procedure and was part of basic regulatory function. The issuance of building permits is a ministerial duty of the

Respondents, as outlined in Ordinances available for public review. Thus, as in *Jones, supra*, after consideration of these three factors, the actions of the Respondents did not interfere with the plaintiff's property rights.

Therefore, because the Respondents' issuance of the building permit did not infringe upon the Petitioner's protected property interests, it follows that his procedural due process arguments do not state a claim upon which relief may be granted. *See Burns v. Pa Dep't of Corr.*, 544 F.3d 279, 285 (3d.Cir.2008) ("To prevail on a procedural due process claim, a litigant must show 1) that the state deprived him of a protected interest in life, liberty or property..."). A plaintiff must further establish that the State action not only burdened a protected right, but also, that said right was deprived without a fair hearing either because a claimant did not receive adequate notice or a reasonable opportunity to be heard. *Deibler v. Rehoboth Beach*, 790 F.2d 328, 331 (3d Cir. 1986); *see also Wolff v. McDonnell*, 418 U.S. 539 (1974); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

To determine what procedural protections the Constitution requires in a particular case, the Courts weigh the following factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such

> interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Zinermon v. Burch, 494 U.S. 113, 127 (1990) (citing *Matthews v. Eldridge*, 424 U.S. 319 at 435 (1976)).

Instantly, the Petitioner attempted to allege that his procedural due process rights were violated when the Respondents issued a permit for renovations to his roof. Although, an ownership interest in property is considered a protected right within the meaning of the Due Process Clause, *Independent Enterprises, Inc. v. Pittsburgh Water & Sewer Authority*, 103 F.3d 1165 (3d Cir. 1997), the plaintiff has failed to establish that said right was deprived without adequate notice or reasonable opportunity to be heard. To the contrary, the allegations and undisputed facts of this case demonstrate that the plaintiff was afforded constitutionally adequate notice and opportunity to be heard before the permit was issued.

Tredyffrin Township received request letters from defendant Arthur Klein, Esquire, president of the homeowners association, on October 20, 2003 and

December 17, 2003, with regard to permits for the roof work for the entire association. The actual application was not filed until June 24, 2004 by Atlantic Roofing Corp. and it certified that "the proposed work is authorized by the owner of record." The permit was issued on June 25, 2005, but because of the Petitioner's objections, township manager, Marie R. Gleason, wrote to the roofing company on July 16, 2004, advising that until the Petitioner's objections were resolved, proceeding with the new roof would be done at the company's own risk.

In the meantime, the Petitioner had been provided with a copy of the township's 993 BOCA code, Section 107.3, which states:

> If the application is made by a person other than the owner in fee,it shall be accompanied by an affidavit of the owner or the qualified applicant or a signed statement of the qualified applicant witnessed by the code official or his designee to the effect that the proposed work is authorized by the owner in fee and that the applicant is authorized to make such application.

Id. In this regard, the township had been provided with the following evidence that the Homeowners Association was authorized to request a permit for, and complete, the roof replacement:

1. Declaration of Covenants and Easement dated 12/20/1984, Article VIII, Exterior Maintenance; Assessment Therefor, Section I Exterior

Maintenance. In addition to maintenance of the common areas and facilities, the association shall provide upon any lot requiring same, when necessary in the opinion of the board of directors of the association to preserve the beauty, quality and value of the neighborhood, maintenance, including paint repair, roof repair and replacement, gutters, downspouts, exterior building surfaces and yard clean up and/or maintenance..

2. Minutes of the special roof meeting of 7/16/03 at which the owners voted 43 to 13 to approve the special assessment for the roofing project.

3. Unanimous consent of the directors of the Main Street Village Homeowners Association dated 7/16/03 approving the roof replacement and assessment.

4. Copies of the By-laws of the Main Street Village Homeowners Association.

5. Revised rule and regulations of the Main Street Village Homeowners Association.

Petitioner appealed the issuance of the permit on July 15, 2004, which subsequently was assigned to the BOCA Appeals Board, pursuant to the code and ordinance. The Board consisted of seven members, including an engineer and architect who were not employed by the township. Notice of the hearing was provided on August 6, 2004 and a reminder e-mail was sent to the Petitioner on August 10, 2004. The hearing was conducted on August 11, 2004 and the Petitioner attended. A decision was issued by the Board on August 23, 2004, which upheld the issuance of the permit. The decision cited the Declaration Article XIII, Section I, Exterior Maintenance, together with the minutes of the special roof meeting, Homeowners Association unanimous

consent of directors, declaration, by-laws and revised rules and regulations. The decision concluded that the homeowners association was authorized to maintain the exterior of all buildings including roofs, and that the homeowners approved the roof replacement and assessment by a vote of forty-three to thirteen. Accordingly, the plaintiff's appeal was denied.

As noted above, the Petitioner failed to demonstrate that he received constitutionally inadequate notice or opportunity to be heard with regard to the appeal of the issuance of the building permit for his roof renovations. Therefore, the plaintiff's claim that he was denied procedural due process does not warrant Certiorari with this Court. Petitioner does not allege any reason why this Honorable Court would have jurisdiction to hear this claim. As stated in the Rules of the Supreme Court of the United States Rule 10, "a petition for a writ of certiorari will be granted only for compelling reasons." The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law. Furthermore, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant decisions of the United States Supreme Court. Therefore, there is no basis for jurisdiction in this Court.

VIII. CONCLUSION

For the foregoing reasons, Respondents respectfully request the Court to deny the Petition for Writ of Certiorari to the United States Supreme Court.

Respectfully submitted,

BY: _____

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